**PRELIMINARY DRAFT**

# STAGE 1 REVIEW PROCEDURES

**of the**

# CONAWAPA ENVIRONMENTAL REVIEW PANEL

March, 1992

*[EXPLANATORY NOTE -The attached draft procedures for the Stage 1 Review of the Conawapa Environmental Review Panel are being circulated to all interested participants for consideration and comment. The procedures are to guide the Stage 1 Review of the environmental assessment in a manner consistent with the terms of reference and mandate of the Panel.*

*To seek public input, the draft procedures are being widely circulated for comment and will be reviewed and discussed before being finalized by the Panel. A record of comments and discussions will be prepared and made public as part of the development of the final procedures. To ensure that the purpose of the various sections and provisions are clear, the draft has explanatory notes. It also provides space for comments and recommended changes.*

*The Secretariat of the Panel will convene an information session on the development of the procedures. Please call the Secretariat (see below) if you wish to participate, and you will be notified as to the date, time and place of the session.*

*It is not expected that detailed comments on the procedures will have been prepared at that time. The purpose of the initial session is to provide information, answer questions and consider the timing of follow-up sessions to allow the Secretariat, the Proponent, and interested participants to discuss and consult on the procedures.]*

*The proposed hydro-electric development itself will not be dealt with in the draft procedures. This will come later, when the Panel begins its formal assessment of the environmental impacts. This document and the procedure review sessions are to assist the Panel to develop procedures that will guide procedural meetings, scoping workshops and public hearings of the Environmental Assessment Panel.*

Your views and comments on how the Panel should conduct the assessment are important and will be carefully considered. Questions, suggestions and responses may be directed to:

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## ORGANIZATION AND LANGUAGE

[***EXPLANATORY NOTE - Organization and Language*** *- The procedures are written and organized to make them easily understood and accessible. Legalistic and overly formal phrases and terms were avoided wherever possible.*

*There are six sections that group together similar procedures:*

1. *General Principles*
2. *Written Questions*
3. *Community Meetings*
4. *Scoping Workshops and Public hearings*
5. *Procedural Meetings*
6. *Concepts & Glossary.*

*How could the organization of the document be improved? Are there terms and phrases that need to be either better defined or avoided? How can the procedures be made easier to understand?*]

Comments

## INTRODUCTION

[***EXPLANATORY NOTE - Introduction*** *- The introduction sets out the mandate of the panel and clearly indicates that the purpose of the procedures for the Stage 1 review is to achieve the over all goal of an effective and fair assessment. It underlines the flexibility of the process and the importance of public participation. Unlike the Explanatory Notes which are included only for the purposes of this review, the "Introduction" will always form part of the Procedures.*

*Does the introduction set out the purpose of the assessment? Should additional information be attached to the procedures?*]

In June 1991, the federal and Manitoba Ministers of Environment appointed a six person Environmental Assessment Panel to conduct a public review of Manitoba Hydro's proposed Conawapa generating station, BiPole III transmission line complex and interconnection to Ontario. Such public hearings are necessary under the Manitoba Environment Act and were requested by the federal Minister of Fisheries and Oceans.

The panel's Terms of Reference were established by agreement between the federal and Manitoba governments. The mandate of the Panel includes the establishment of operating procedures. By letter dated July 30, 1991, procedures pertaining to the general operation of the Panel were transmitted to Manitoba Environment and the Federal Environmental Assessment Review Office (FEARO) for approval and were subsequently approved. These procedures have since been placed on the public registries and circulated for comment.

The Mandate of the Panel requires that the review will be conducted in two stages. In Stage 1, the Panel shall review and make recommendations relevant to the approval, rejection, or approval with terms and conditions of the proposed Conawapa generating station, BiPole III transmission line complex and interconnection to Ontario.

This document sets out Operational Procedures for the Stage 1 review. It is intended for the guidance of those wishing to participate in scoping workshops and public hearings where technical matters will be considered and in procedural meetings of the Panel. It does not apply to the Community Meetings that will be held by the Panel.

The goal of the Panel is to conduct an effective and fair review. To be effective all interested persons must have an adequate opportunity to participate. Fairness implies an equal opportunity to present views and opinions, without undue pressure from lawyers and

others with technical expertise. These Procedures have been prepared, keeping in mind the following:

- The balance that must be struck between the need for order and efficiency and the desire for an informal and supportive atmosphere to encourage public participation. The procedures must be sufficient to give an organized structure to the assessment process without making the meetings unduly complicated, rigid or intimidating.

- The importance of accommodating the general public, the views and concerns of members of the affected communities, technical experts, the proponents and the government.

These Procedures are to guide the Stage 1 Review. They embody and expand upon the Operating Procedures released earlier by the Panel. They are not intended to cover every possible eventuality. It should not be assumed that if something is not found in the Procedures, it cannot or will not be considered; nor is it necessary that the Procedures be followed in every instance. While the procedures should, in general, be observed, instances may arise where there are strong reasons why the purposes of the Assessment would better be achieved in some other way. In those instances, the Chairperson can provide alternative direction.

Comments

## 1. GENERAL PRINCIPLES

[***EXPLANATORY NOTE - General Principles*** *- The general principles derive from the purposes of the review itself. It is an important section in that it is to provide guidance to the other procedures.*]

### Review Process and Procedures

1.1 The purposes of these review procedures are:

a) to facilitate the assessment of the environmental and social effects of the proposed development in a fair and efficient manner;

b) to provide opportunity for members of the public to understand the proposed development and its anticipated effects;

c) to encourage an informal atmosphere, with sufficient structure to meet the needs of participants and the Panel; and

d) to encourage cooperative and constructive discussion between Manitoba Hydro and other participants.

### Manner of Participation

[***EXPLANATORY NOTE - Manner of Participation*** *- the manner of participation deals with the procedures which will guide the participation of individuals and groups in the process. The intention is to provide enough structure to ensure a well run process, while not stifling or inhibiting participation.*]

1.2 The Panel is responsible for overseeing all aspects of the public review and for making decisions concerning the review process.

1.3 The Chairperson or, in his absence, the alternate Chairperson, will chair any proceeding and issue decisions of the Panel.

1.4 Participants and Manitoba Hydro are requested to present their views and questions in a tone and style that are courteous, non-antagonistic and respectful of others. Good faith should be presumed by and from all participants. Clarity and brevity will be in the public interest and will facilitate the public hearing process.

[*EXPLANATORY NOTE - Tone and Style - The tone and style of the process are important. An atmosphere of cooperation and courtesy are to be encouraged. Every effort will be taken to avoid confrontation and antagonism during the process.* ]

1.5 Participants have the right to be represented by legal counsel, however, this is not necessary. The Panel would generally find direct presentations by participants more helpful than presentations by counsel. It is not appropriate for counsel to give evidence. If a participant chooses to be represented by counsel, counsel are requested to conduct themselves with courtesy and consideration to facilitate the purposes of the public hearings and particularly the involvement of the public.

[*EXPLANATORY NOTE - Legal Representation - The involvement of legal counsel has been a contentious point in processes of this kind. The intention of this procedure is to ensure that those who wish to be represented by counsel can be, while clearly indicating that, in the view of the panel, no participant should feel that their presentation will have less weight if counsel are not involved. For this reason, the procedures encourage participants to appear without counsel where they feel comfortable to do so.* ]

1.6 Manitoba Hydro is requested to provide a professional and balanced understanding of its proposed development to the Panel and the public.

1.7 Technical and scientific witnesses are expected to present accurate information and professional opinions to assist the Panel. Attacks on the integrity of witnesses are not appropriate.

## Timely Exchange of Information

1.8 Manitoba Hydro and other participants should make relevant documents available to those requesting them at the earliest practical time.

## Confidentiality

[*EXPLANATORY NOTE - Confidentiality - To make it absolutely clear that the review process will be open and objective, the Panel will make public the information that it receives. Where information is requested from a participant and there are concerns with confidentiality, a summary may be used.* ]

1.9 Information submitted to the Panel from any source will be publicly available. The Panel will not accept information which is submitted on the basis that it remain confidential or restricted regarding its release to the public.

1.10 Where a participant or Manitoba Hydro is asked for information which is confidential, they should inform the Panel of the reason for or nature of the confidentiality. Recognizing that this is a public process, they will be requested to provide a summary or excerpt to meet the purpose of the request without breaching the confidentiality.

## Seeking Agreement

[***EXPLANATORY NOTE - Seeking Agreement*** *- Whenever possible, participants should try and work out any difficulties before the review process (e.g., order or timing of presentations, information to be provided, scope or extent of the Review). Some reviews have provided detailed procedures for the settling of differences. We thought it best to leave the details up to the participants.*]

1.11 Participants are requested to seek to resolve any differences on matters relating to the conduct of the review by agreement whenever possible.

1.12 In the event that any participant is concerned about a legal or procedural issue concerning the review, the participant is requested to bring it to the attention of the Panel Secretariat in a timely manner.

Comments

## 2. WRITTEN QUESTIONS

[*EXPLANATORY NOTE - **Written Questions** - To ensure that necessary information can be obtained in a reasonable and timely fashion, a simple preliminary process is proposed. Is the process fair and responsive? What improvements could be made?* ]

### Purpose

2.1 The purpose of written questions is to permit informed and timely dialogue among participants and Manitoba Hydro.

### Use of Written Questions

2.2 Participants and Manitoba Hydro should use written questions, at any time and as early as practical, to obtain information from each other of such depth or complexity that oral questioning in public hearings may be lengthy or inefficient. The author of each written question and reply should promptly provide a copy to the Panel Secretariat for the public record.

### Replies

2.3 Replies to written questions should be expeditious, full and responsive to the substance and spirit of the questions.

2.4 Manitoba Hydro and participants are requested to promptly advise the questioner of the expected date of a response. If a response is considered deficient or delayed unduly, the questioner should contact the author of the reply to determine whether there has been a misunderstanding and whether an adequate reply can be provided within a reasonable period of time. The co-executive secretaries to the Panel should be informed if an agreement cannot be reached. The Chairperson may arrange a meeting of those involved or otherwise attempt to resolve the issue.

Comments

## 3. COMMUNITY MEETINGS

*[**EXPLANATORY NOTE** - **Community Meetings** - A distinction has been made between community meetings on the one hand and scoping workshops, procedural meetings and public hearings on the other. Treating community meetings differently is reflected in the practices and often the procedures of other assessments. The purpose is to ensure that the meetings are responsive to the communities' needs.*

***The following items are intended only to clarify for all participants the anticipated role and nature of community meetings, and their relationship to the rest of the review process. The specifics of community meeting procedures will be worked out with each community as an integral part of the meeting arrangements and it is assumed that those intending to participate in other places will not seek to have input into them. The consultation process respecting these Stage 1 Review Procedures is however intended to also provide interested participants with opportunity to have input into procedures for Winnipeg community meetings.]***

### Purpose

3.1 The purpose of community meetings is to enable residents of areas that would be affected by the Conawapa project to identify issues that should be addressed in the public review. The meetings are intended to be friendly and informal and to encourage full public participation. The public is encouraged to present views, positions, concerns, questions or other information which would assist the Panel to identify and priorize issues that should be considered by Manitoba Hydro in preparing their Environmental Impact Statement.

### Community Participation

3.2 In general, members of a community will be given priority to make presentations at a community meeting in or near their community. They may also participate in scoping workshops, technical meetings or public hearings.

Meeting Announcements and Procedures

3.3 The Panel will announce community meetings at least twenty-one (21) days in advance and will issue agendas and specific procedures for each meeting. This document (i.e. the Stage 1 Review Procedures) is in general **not** intended to apply to community meetings except to the extent that may be specified in the agendas and specific procedures for any particular community meeting.

Comments

## 4. SCOPING WORKSHOPS AND PUBLIC HEARINGS

[***EXPLANATORY NOTE*** *- **Scoping Workshops and Public Hearings** - Where technical information being presented or evaluated, a more structured approach may be both acceptable and desirable.*

*Notice of the meetings was approached with care. The time limits were thought to be adequate to prepare, particularly given the advance notice of the overall process.*]

## Purposes

4.1 The purpose of scoping workshops is to identify technical and scientific issues that should be examined in the review and the information required to better understand these issues.

4.2 The purpose of public hearings is to allow for a fair and full public review and examination of the information received by the Panel and to solicit public comment on matters relevant to the Panel's mandate.

4.3 Scoping workshops and public hearings will be conducted in a non-judicial but structured manner without unnecessary formality.

## Participation

[***EXPLANATORY NOTE*** *- **Participation** - Although these meetings are to receive the technical information, they are not to be perceived of as "meetings of technicians". All participants should feel welcome and able to play a role .* ]

4.4 The Panel may designate portions of any scoping workshop or public hearing to receive technical and scientific information or to receive the views of the public. Members of the public have every right and should perceive that they have every right to appear without feeling intimidated.

## Announcement of Scoping Workshops and Public Hearings

4.5 The Panel will announce scoping workshops at least twenty-one (21) days in advance and public hearings thirty (30) days in advance.

## Registration and Pre-filing Presentations

[***EXPLANATORY NOTE*** *- **Registration** - Having participants register will assist in organizing the sessions. The Chairperson will, however, have the discretion to allow other participants without registration or notice, depending on the circumstances.*]

4.6 Participants who wish to make oral presentations at scoping workshops or public hearings are requested, but not required, to provide the following information to the Panel Secretariat as soon as possible after the announcement, and at least seven (7) days before the session:

a) name, address, telephone/ fax of contact person and group represented, as appropriate;

b) a copy of the presentation which will be distributed to pubic registries;

c) estimated time required for the presentation; and

d) special requirements such as equipment or translation.

4.7 Those whose oral presentations are based on scientific or technical facts or expert opinion are required to provide the following information to the Panel Secretariat as soon a possible after the announcement, and at least fourteen (14) days before the session:

a) the information indicated in 4.6 a), c) and d);

b) twelve (12) copies of the presentation;

c) a statement indicating the qualifications of each scientific or technical witness;

d) a list of documents referred to in the presentation; and

e) a copy of any referenced documents which are not generally available.

4.8 Those who have not registered and pre-filed presentations in the manner indicated above may, with leave of the Chairperson, participate in the technical sessions if and to the extent that time permits, or they may be requested to make all or part of their submissions in writing.

## Oaths and Affirmations

[***EXPLANATORY NOTE - Oaths and Affirmations*** *- Where the information being presented relies on the professional opinion of the presenter, an oath may be thought appropriate whereas it would not be for the community meetings. In any event, the federal process does not provide for witnesses to swear an oath, and no witness will be required to do so.*]

4.9 Any person giving evidence may choose to swear an oath or make an affirmation.

## Technical and Scientific Presentations

4.10 Those presenting technical or scientific information at public hearings may present the information in three phases: Opening Statements, Main Presentations, and Final Remarks. The Opening Statement should be short and inform the Panel of the nature of the technical/ scientific information to be presented. The Main Presentation should include technical or non-technical facts or information relevant to the proposed development and its effects and may be subject to questioning. Final Remarks will not be subject to questioning and should not contain any new technical or scientific information;

4.11 Presentations at public hearings will generally be made in the following sequence: Manitoba Hydro, technical specialists for government agencies, technical specialists for participants, and other participants. In establishing the detailed order of presentations, the Chairperson may have regard to presentations filed with the Panel Secretariat and the order in which these materials were received. Where circumstances require or at the request of any participant, the Chairperson may change the order of presentations.

## Time Limits

4.12 The Chairperson may impose time limits on any presentation in any session, in the interests of fairness to all participants, and may permit anyone to supplement their oral presentation in writing within a specified time limit.

## Questions

[***EXPLANATORY NOTE*** *- **Questions** - While the public hearings are not adversarial in nature, the questioning of witnesses is important to test and elaborate on the information presented.*]

4.13 Each presenter may be questioned after his or her presentation at the discretion of the Chairperson. Critical speeches or arguments or attacks on the integrity of witnesses will not be permitted during questioning.

4.14 Anyone submitting technical or scientific information may be subject to detailed questioning for purposes of further clarification or explanation, examining the accuracy of technical or scientific facts, or the validity of expert opinions presented.

4.15 Other participants may be questioned informally for purposes of clarification.

4.16 Where a presentation is given by a group, it is requested that one member be designated to respond to, or to organize responses to, questions directed to the group.

4.17 Questions may be directed to any member of a group making a presentation. If that person is unable to fully answer the question, it may be referred to another member of the group for reply.

### Transcripts

4.19 Public hearings will be recorded. Computer diskette copies of the record will be made available to participants in a timely manner. Those wishing a diskette copy of any part of the proceedings should advise the Panel Secretariat.

Comments

## 5. PROCEDURAL MEETINGS

[***EXPLANATORY NOTE*** *- **Procedural Meetings** - The quality of the public hearings will be improved if the procedures provide for a way of dealing with matters as soon as they arise and prior to the public hearings. Participants are invited to use procedural meetings to deal with concerns prior to the public hearings.*]

## Purpose and Process

5.1 Procedural meetings of the participants and Manitoba Hydro may be called by the Chairperson for the purposes of facilitating the exchange of information, seeking agreement or consensus on any matter as between those with an interest in it, or consulting on procedural or legal issues. The Chairperson may refer any matter to a procedural meeting in order to preserve the quality of participation in other sessions. The Chairperson may ask Panel Counsel or either of the Co-executive Secretaries to chair a procedural meeting.

## Directions

5.2 The Panel will upon request provide guidance on any matter, if it feels able to do so and that this will facilitate the purposes of the review. Participants may apply to the Panel in writing for guidance on any matters, such as:

a) scheduling or rescheduling a submission;

b) setting aside or varying the application of any of the review procedures;

c) resolving any differences of view between participants concerning any aspect of the review; and

d) indicating in advance whether a particular subject matter (e.g. a geographic area) is considered to be potentially within or relevant to the Panel's mandate.

Comments

## 6. CONCEPTS & GLOSSARY

[*EXPLANATORY NOTE - Concepts and Glossary - Although every attempt was made to use plain language and to avoid technical terms, there are a number of concepts and phrases that are necessary and require explanation and definition. That is the purpose of this section. What other terms or concepts should be added?*]

Following are the explanations of some terms used in these procedures and in other documents relating to the Conawapa Review.

The **EARP (Environmental Assessment and Review Process)** Guidelines Order is a federal Privy Council Order establishing the process to be followed for environmental assessments under federal jurisdiction.

An **EIA (Environmental Impact Assessment)** is a study conducted by researchers, consultants and scientists in order to assess the likely effects (whether physical, biological, ecological, social, economic, etc.) of the proposed development. The results of the study are set out in detail suitable for technical review and evaluation in the Environmental Impact Statement.

An **EIS (Environmental Impact Statement)** is the documentation resulting from an EIA.

**FEARO** is the Federal Environmental Assessment and Review Office, which is responsible directly to the federal Minister of Environment for administering the EARP Guidelines Order.

**Impact Assessment** is a discipline concerned with forecasting the likely nature and extent of any consequences of a proposed development in order to guide decision making about whether the development should proceed, and if so under what conditions (including mitigation and monitoring).

**Joint Review** refers to an environmental assessment and review process which is established to meet both federal and provincial requirements simultaneously.

**Manitoba Environment** is the provincial department (also referred to as the Manitoba Department of Environment) which is responsible for administering the Environment Act, including the provincial environmental assessment and review process.

**Mitigation** includes any measure designed to modify the expected nature or extent of

adverse consequences of a proposed development.

**Monitoring** includes any ongoing process or program for measuring the actual effects of constructing or operating a development.

**Panel** refers to the six-member environmental assessment review panel jointly appointed by the federal and Manitoba Ministers of Environment.

The **Panel Secretariat** (or the **Secretariat**) consists of the two Co-Executive Secretaries appointed by FEARO and Manitoba Environment and other staff, who assist the Panel in carrying out the Public review. The Secretariat offices are at 715-330 Graham Avenue, Winnipeg, Manitoba, R3C 4A5. The office phone number is 945-8425 (fax 945-0175). Calls from outside Winnipeg may be made to 1-800-282-8069 toll-free in Manitoba.

A **Participant** is a person or group who wants to present a position, views, concerns, questions or information to the Panel in a meeting, public hearing, or workshop.

The **Proponent** is Manitoba Hydro.

A **Scoping Workshop** is designed to enable participants to have input into the technical and scientific aspects of determining the subjects to be studied in the EIA.

**Session** refers collectively to public hearings, scoping workshops, procedure meetings, and any other public proceeding within the Review process.

Comments